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Attorneys for: Creditors
Maria E. Vargas, Trustee of the INCA Trust
Dated August 1, 2009; Gaspare Orlando and
Benita J. Orlando; Albert J. Seadler and
Helen M. Seadler, Trustees of the Seadler
Family Trust Dated April 27, 1999; Trust
Company of America fbo: Donna McLaughlin
Account No. 27829; Trust Company of America
fbo: Katie Mahan Account No. 30829;
Joshua Baldwin and Kelly Baldwin

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

* * *

In re

PAUL SANDNER MOLLER and
ROSA MARIA MOLLER,

Debtors.

Case No. 09-29936-C-11

Chapter 11

D. C. No.: HTP-1

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
WAIVER OF FRBP 4001(a)(3)**

Preliminary Hearing:

Date: October 13, 2009

Time 9:30 a.m.

**Place: Dept. C, Courtroom 35
6th Floor, 501 I St.
Sacramento CA
(Judge Klein)**

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**TO THE HONORABLE CHRISTOPHER M. KLEIN, UNITED STATES
BANKRUPTCY JUDGE:**

Creditors Maria E. Vargas, Trustee of the INCA Trust Dated August 1, 2009; Gaspare Orlando and Benita J. Orlando; Albert J. Seadler and Helen M. Seadler, Trustees of the Seadler Family Trust Dated April 27, 1999; Trust Company of America fbo: Donna McLaughlin Account No. 27829; Trust Company of America fbo: Katie Mahan Account No. 30829; Joshua Baldwin and Kelly Baldwin ("Movants"), respectfully move the court for relief from the automatic stay of 11 U.S.C. §362(a) to permit Movants, their employees, agents and assigns, to complete non-judicial foreclosure proceedings on the Debtors' real property commonly known as 1222 Research Park Drive, Davis CA 95618 (the "Real Property"), and to waive the ten-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3), on the grounds that cause exists for such relief under 11 U.S.C. §362(d)(1) in that Movants lack adequate protection for their interest in the Real Property, and have been subject to prejudicial, unreasonable delay. Movants base their request on the following:

1. Movants hold the beneficial interest in a Promissory Note dated April 13, 2005, in the original principal amount of \$700,000, made payable to Sterling Pacific Financial, Inc., ("Sterling Pacific") or to order (the "Note"). A Deed of Trust encumbering the Real Property, recorded in the Office of the Yolo County Recorder on April 25, 2005, as Document No. 2005-0018813-00 (the "Deed of Trust") secures the Note. The Real property consists of commercial property in Davis.

2. A written agreement, recorded in Yolo County on February 8, 2007, as Document No. 2007-0029664-00 subordinated the priority of the Deed of Trust to a deed of trust securing an obligation owing to Exchange Bank (the "Senior Obligation")

3. The debtors filed their Chapter 11 petition on May 18, 2009. Prior to that date, and at all times since, the debtors were in default under the Note, including:

- a. Failure to make payments due on the Note on or after August 1, 2008;
- b. Failure to pay property taxes due on the Real Property for the 2007-2008 fiscal year, and that amount, in excess of \$36,000, remains in default;

1 c. Failure to pay the Senior Obligation, causing the holder of said encumbrance
2 to record a notice of default, and then a notice of trustee's sale affecting the Real Property.
3 Movants are informed and believe and based thereon allege that said trustee's sale has been
4 continued to October 7, 2009, at 12:00 p.m., subject to the automatic stay of 11 U.S.C. §362(a)
5 in this case. The notice of trustee's sale, dated January 21, 2009, stated the amount needed to
6 pay the Senior Obligation as \$3,411,881.00.

7 4. The debtors' schedules list the value of the Real Property at \$4,900,000.00.
8 Movants are owed approximately \$823,500.00, plus accruing interest, principal, costs and fees.
9 Adding this to the amounts stated for senior liens and encumbrances above would give Movants
10 an equity cushion of less than \$630,000 (ignoring accruing interest on senior encumbrances and
11 any costs of sale). Assuming an eight percent (8%) cost of sale leaves an equity cushion of
12 about \$230,000. Regardless of whether one considers costs of sale of the Real Property, any
13 equity cushion supporting Movants' position has eroded, and continues to erode. For this
14 reason, Movants lack adequate protection for its interest in the Real Property.

15 5. On or about September 14, 2009, the debtors filed a plan and disclosure
16 statement in this case. That plan proposes to suspend payments to Movants and to the senior
17 encumbrance until September 1 of 2010. If such a plan were confirmed¹, Movants' position
18 would deteriorate much further, and the value of its interest in the Real Property would decline.
19 In addition, that plan and disclosure statement suffer from defects that would prevent the court
20 from approving the disclosure statement or confirming the plan as filed.² This will subject
21 Movants to further delay, during which the value of their interest in the Real Property will
22 continue to decline.

23 _____
24 ¹ Movants believe that debtors' plan is unconfirmable on its face. Among its other substantive and procedural
25 flaws, it fails to classify holders of secured claims as separate classes, it lacks a Document Control Number and
26 has no hearing date set for approval of its disclosure statement, it uses an ambiguous reference for the rate at
27 which secured claims accrue interest, and it fails to satisfy the requirements for a plan proposing negative
28 amortization. The presentation of such a plan presents a further unreasonable delay on Movants' payment.

² In addition to the defects mentioned in Note 1, above, there is a serious question of whether the debtors have
complied with the provisions of Chapter 11, as required by 11 U.S.C. §1129(a)(2). The monthly operating
reports for July and August show the debtors have made loans in excess of \$45,000.00 in those two months to
Moller International. There is no record of seeking or obtaining court approval for these expenditures which, at
least on the surface, appear to involve the use of property of the estate outside the ordinary course of business.

1 WHEREFORE, Movants respectfully request that the court grant relief from
2 stay and a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) as set forth above.

3 Dated: September 29, 2009. THE LAW FIRM OF POWELL & POOL.
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6 By /s/
7 HANNO T. POWELL
8 Attorneys for Movants
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